



**Testimony of Thomas Lindberg  
Director, Legislative and Regulatory Affairs  
Northeastern Retail Lumber Association  
On Behalf of the Lumber Dealers Association of Connecticut (LDAC)  
Before the Legislature's General Law Committee  
Hearing on HB 5137  
February 16, 2010**

On behalf of the 100 retail lumber dealers and associated businesses of the Lumber Dealers Association of Connecticut (LDAC), I appreciate this opportunity to present testimony in opposition to HB 5137 as introduced by the General Law Committee. LDAC represents independent lumber and building material dealers, manufacturers, wholesalers, distributors, and other associated small businesses in this state that employ 2,450 Connecticut residents and account for over \$1 billion in annual sales revenue.

HB 5137 would prevent a home improvement subcontractor from placing a mechanic's lien on a residential homeowner's property for failure of the general contractor to pay the subcontractor when the homeowner has paid the contractor or is disputing the contractor's compliance with a home improvement contract. LDAC respectfully opposes this bill as it would impair the ability of subcontractors from placing liens.

LDAC believes that a homeowner should share a degree of responsibility in ensuring that their contractor is paying subcontractors and material suppliers from funds the homeowner has paid them. This bill would remove that responsibility once the homeowner pays the contractor, eroding the effectiveness of one of the most important risk protection tools subcontractors and material suppliers have. The homeowner would no longer have a stake in the outcome of the dispute if an unscrupulous or careless contractor uses homeowner payments from a particular project to pay off other debts and not to pay off subcontractors or material suppliers. If that contractor goes out of business or files bankruptcy, the subcontractor or material suppliers are out of luck and, more importantly, the value of labor and materials they supplied to the project. Since there is no Construction Trust statute in Connecticut, their liens on the contractor can be discharged in a bankruptcy proceeding.

Subcontractors and material suppliers are in a unique position of risk in a home improvement or construction project in that they provide labor and materials on some basis of credit, yet they cannot take back that labor or the materials if they do not get paid. Mechanics liens address this

risk by offering some degree of protection to recover payment for labor or material. This bill would significantly erode the effectiveness of this important risk protection tool.

For the past several years LDAC has supported legislation that would create a Construction Trust statute in Connecticut. The express trust would allow creditors connected to a specific building project to gain access to monies owed for services and supplies, even when bankruptcy is being filed. The significance of the express trust relationship is to ensure that when a contractor receives payment for materials or services from a particular building project, the contractor has an obligation to transfer those funds to the appropriate creditor. The statute would also achieve some of the intent of HB 5137 in protecting those homeowners who have paid a contractor who is declaring bankruptcy for services and supplies, but whose payments have not been forwarded to the necessary creditors, from having liens placed on their property. If the supplier and subcontractor can verify that the contractor has misappropriated those funds, the debt owed to them will be non-dischargeable and the suppliers and subcontractors who have not been paid can seek legal redress from the contractor instead of the homeowner.

For these reasons, LDAC requests that Committee consider construction trust legislation instead of HB 5137 in order to provide risk protection for subcontractors and material suppliers, in addition to protecting homeowners against having liens placed on the property even after paying their contractor. We would be happy to work with the Committee in assisting with this important issue.

This completes my testimony. Thank you for your attention.